



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 10, 1998

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR98-1426

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 115995.

The City of Dallas (the "city") received a request for "all documents regarding the issue of the jurisdiction of the Board to hear the above referenced case and/or the current status of P.T.'s as a legal, illegal, conforming and/or non-conforming use both as a dance hall and as a sexually oriented business." In response to the request, you submit to this office for review the records which you assert are responsive. You assert that the requested information is excepted from required public disclosure by sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

....

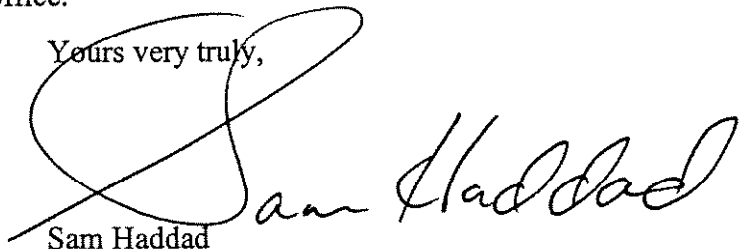
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You have submitted a "Complaint in Intervention" pending in the United States District Court for the Northern District of Texas. *Baby Dolls Topless Saloons, Inc. et al. v. City of Dallas*, Civil Action No. 3-97-CV-1331-R (N.D. Tex.). This action seeks declaratory relief from the enforcement of a city ordinance regulating sexually oriented businesses. The city has thus met its burden in establishing that litigation is pending. After reviewing the submitted materials, we further conclude that the requested information relates to the pending litigation. In this instance, you have made the requisite showing for purposes of section 552.103(a) that the requested information is related to pending litigation. Therefore, the requested records may be withheld under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As we resolve your request under section 552.103, we need not specifically address your other claimed exception at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a large, loopy, handwritten "S" that serves as a flourish or initial.

Sam Haddad  
Assistant Attorney General  
Open Records Division

Ref.: ID# 115995

Enclosures: Submitted documents

cc: Mr. Roger Albright  
Attorney at Law  
3301 Elm Street  
Dallas, Texas 75226-1637  
(w/o enclosures)